



"Zabcik JD (David)"
 <JDZabcik@equiva.com>
 m>

08/14/02 06:53 PM

To: Charlotte Mooney/DC/USEPA/US@EPA
 cc: Ingrid Rosencrantz/DC/USEPA/US@EPA, William
 Brandes/DC/USEPA/US@EPA, "Meeuwsen MJ (Mike)"
 <MJMeeuwsen@equiva.com>, "Hand H (Herb)"
 <HHand@equiva.com>, Wendel Janice M <WENDEL@SHELL.COM>,
 Hanson Thor P <TPHANSON@EQUILONTECH.COM>
 Subject: Request for Suggestions for Revision of Definition of "Solid Waste"

David Zabcik

Equiva Services, LLC

HSE Env Affairs - 300-B NAX

12700 Northborough Drive

Houston, TX 77067

Phone: 281-874-4944

Fax: 281-874-7925

E-mail: JDZabcik@Equiva.com

<<...OLE_Obj...>>

August 14, 2002

Ms. Charlotte Mooney
 U.S. Environmental Protection Agency
 Office of Solid Waste and Emergency Response
 Chief, Generator and Recycling Branch
 Hazardous Waste Identification Division
 (Mail Code 5304W)
 1200 Pennsylvania Ave., NW
 Washington, D.C 20460

Re: Request for Suggestions for Revision of Definition of "Solid Waste"

Dear Ms. Mooney:

On March 13th, EPA published a notice amending certain regulations regarding mineral processing residuals in response to the D.C. Circuit decision in Association of Battery Recyclers v. EPA, 208 F.3d 1047 (2000). 64 FR 11251. In that notice, EPA invited suggestions from the public as to potential future revisions to the regulatory definition of "solid waste" (DSW), in particular, revisions that would encourage more reuse and recycling throughout the United States.

Equiva Services LLC, on behalf of Shell Oil Products US, Equilon Enterprises LLC, Motiva Enterprises LLC, and Deer Park Refining Limited Partnership (collectively the "Companies") take this opportunity to submit comments on the above referenced Federal Register notice. The

100-180-1000-1000
Companies own and operate nine refineries nationwide, pipelines, distribution terminals, marketing outlets, and lubricant blending plants.

The Companies endorse and concur with the comments on the "Definition of Solid Waste" (DSW) presented separately by the American Petroleum Institute (API). This letter restates some of their comments that are of particular importance to the Companies and provides additional comments not addressed in the API letter.

We welcome EPA's willingness to revise the DSW and recycling-related regulations, and appreciate the opportunity to submit suggestions. We also commend your public statements placing a high priority on this effort. Based on both the notice and comments, we understand that EPA wants to propose a rule that will encourage more recycling. We agree with EPA that there is a strong need to encourage fuller use of materials that lead to better resource conservation. For instance, a recent report from California EPA (*Environmental Protection Indicators for California 2002*) showed that over the last 10 years the amount of hazardous waste generated annually has increased significantly, and the growth rate for material going to hazardous landfills has been almost four times that going to recycling. Regulatory action is needed soon or else that trend will likely continue and in a few years perhaps 90% of hazardous waste will be going to landfills while the recycle amount will shrink to a very tiny percentage (from 34 % now).

We share EPA's goal of increasing resource recovery under Resource Conservation and Recovery Act (RCRA). The Companies want to participate in this process and continue to work with EPA to seek appropriate revisions to the DSW that will help achieve that goal. We believe that revising the regulatory DSW to conform to the definition of "solid waste" in the RCRA, as construed by the courts, would promote beneficial recycling and energy and resource conservation, while adequately protecting human health and the environment.

A fundamental change to the DSW is needed due to the significant time and money (private and government) that is currently wasted arguing over whether some particular load of material is a waste or not. For example, we frequently have new local regulators question whether an oil-water mixture from a terminal or retail location can be returned to a refinery for oil recovery and processing without being classified as a solid and hazardous waste. Typically, after several phone calls and meetings where EPA guidance memos are discussed, we are allowed to return the material to the refinery for oil recovery and processing. However, all the debate and education needlessly consumes a lot of manpower. A clearer definition of solid waste would free regulatory resources to focus on truly significant environmental problem areas.

The Companies believe that RCRA and the relevant judicial decisions, including *ABR v. EPA*, limit the definition of "solid waste" solely to materials that have been "discarded" in the ordinary sense of that term. By contrast, the existing regulatory definition is far more sweeping, and purports to regulate many secondary materials that actually have not been discarded, including many materials that are - or otherwise would be - beneficially reused or recycled. Because of the current DSW, EPA has been forced to adopt a patchwork of exemptions and exclusions to allow specific recycling practices or other re-use of secondary materials to proceed. The result is a

definition that is widely regarded as one of the most complex and confusing federal environmental regulations on the books. The negative impacts of the current definition are obvious to many stakeholders. Among other things, it has caused widespread confusion and misunderstandings, spawned costly and time-consuming lawsuits, and discouraged or prevented many legitimate efforts to recycle secondary materials and otherwise conserve energy and other resources.

We understand that EPA is currently planning a narrow proposal for revising the regulatory definition of solid waste such as excluding materials being recycled outside of a "continuous industrial process within a generating industry." EPA also indicated that you have not ruled out making additional, more far-reaching revisions later. We understand that this rulemaking is intended to be deregulatory, and that EPA does not plan to regulate materials or recycling processes that are not already regulated as solid wastes.

We are seriously concerned that the narrow approach EPA apparently is now considering could result in situations where currently unregulated activities would become regulated. Since today's commerce is too integrated to fall into neat compartments, a series of narrow regulatory changes will not remove the fundamental barrier to more complete use of materials. A narrow approach would address only a portion of the revisions that the AMC I and ABR decisions contemplate, and would lead to more contention, more litigation, and the need for future additional regulatory revisions.

For example, a narrow approach to the DSW now under consideration could bring currently unregulated materials under regulation. As you know, petroleum refineries generate a wide variety of hydrocarbon-containing products and residual materials. Often refinery residuals or products are reinserted into the refinery production process for further processing to make a fuel. However, certain residuals or product streams commonly go to a petrochemical plant (often co-located with the refinery) in order for an element of the stream to be used or extracted for use in a chemical production process. The remaining material/residual is then returned to the refinery for further processing. If EPA adopts a definition excluding only reuse of a material "within a generating industry," this type of shared production activity could become a regulated activity.

We urge EPA to consider a broader approach to reforming this important definition in order to clarify once and for all the scope of EPA's legal authority to regulate "solid waste," in accordance with the limits imposed by RCRA itself and with the court decisions rejecting EPA's prior assertions. To encourage recovery and recycling of valuable resources, EPA should propose to regulate only genuinely "discarded" materials as solid wastes and exclude from the DSW all recycled materials or practices that do not involve actual "discard." This would reduce the volume of valuable resources being placed in landfills and encourage resource recycling and energy recovery by government, industry, and individual stakeholders.

We appreciate your attention and consideration of these comments in development of the proposed rule. We would be pleased to work with you and other OSW staff to find a practical,

effective, and straightforward alternative to the current regulatory definition of "solid waste."
Please call me at 281.874.4944 or send an electronic mail to [<mailto:JDZabcik@Equiva.com>](mailto:JDZabcik@Equiva.com) if
you have any questions or would like to discuss any of these comments further.

Sincerely,

J. David Zabcik
Environmental Advisor

cc: Ingrid Rosencrantz, OSW, HWID
Rick Brandes, OSW, HWMMD